

***Robert Van Pelt American Inn of Court
Problems and Assignments (2005-06)***

Below, and for each Inn, the Executive Committee has assigned topics for the monthly presentations. With the exception of the ever-popular “Jeopardy” program, the problems are new and have been written and chosen by the Executive Committee to cover a diversity of issues.

Each Inn presentation should: (1) rely upon the Inn members as the primary component of the presentation; (2) carefully use and select a blend of skits, speakers, video presentations (such as video tape interviews or multi-media presentations), and hand-outs to make the presentation varied and interesting; and (3) leave the audience feeling that it has learned or relearned something important.

After the “kick-off” social gathering in September (time and place to be announced), the regular monthly meetings will commence in October and run through April. The regular monthly meetings will be held at the Hruska Bar Center.

Meeting 1: Joseph Story Inn; Tuesday, October 11, 2005; Topic:

Jeopardy

Meeting 2: Roscoe Pound Inn; Wednesday, November 16, 2005; Topic:

New Ethics Rules

The Nebraska Supreme Court has adopted a new ethical code. The United States District Court has also adopted a new rule regarding ethics that does not adopt any particular ethics code.

What are the highlights of the new rules?

What problems confront the practitioner with the new rules?

Meeting 3: Louis Brandeis Inn; Thursday, December 15, 2005; Topic:

Engagement Agreements

A client comes into a lawyer to engage the lawyer to represent the client
(a) as a defendant in a criminal case prosecuted in the Nebraska state

courts; (b) a plaintiff in a civil case involving a personal injury to be prosecuted in the Nebraska state courts; (c) as a defendant in an employment discrimination case commenced in federal court; and (d) as a Nebraska corporation seeking to hire the lawyer to do all its legal work—outside general counsel.

Draft an engagement agreement for each case.

Discuss alternative provisions—which provisions are good for the client, and which provisions are good for the lawyer. Consider such things as tax issues on attorney fee awards, what happens if the court awards attorney fees, and whether to use arbitration and mediation as a method of resolving fee disputes.

Survey lawyers in Lincoln, obtain samples of various engagement agreements used by those lawyers, and present a summary of the survey.

Meeting 4: Oliver Wendell Holmes Inn; Tuesday, January 24, 2006; Topic:

Legal “Blawgs”

What are legal “blawgs”? (*Hint: see the internet!*) What are some of the best legal “blawgs”? How would one go about setting up a legal “blawg”? Should lawyers or judges write legal “blawgs” or respond to the posts of others? Should you cite to a legal “blawg” in your briefs or opinions, and, if so, how?

Meeting 5: Learned Hand Inn; Wednesday, February 15, 2006; Topic:

Discovery of Electronic Information

Assuming the case is filed in federal court, viewed from the perspective of plaintiff’s counsel and then viewed from the perspective of defense counsel, both being involved in a product liability case involving the failure of a brake component in a truck manufactured in Korea, discuss the following regarding discovery of electronic information:

Prior to suit being filed, what if any steps should plaintiff's counsel or defendant's counsel take regarding the preservation of electronic information?

As soon as suit is filed, what, if any orders, should be sought regarding electronic information and what if any defenses to such orders should be presented?

Present (by name, subject matter of expertise, and cost) a list of experts who might be able to help counsel with issues regarding discovery of electronic information.

Present a plan that would be acceptable to the plaintiff, the defendant and the court providing for the discovery of electronic information.

Discuss the case law on spoliation claims regarding electronic information.

Is there a role for special masters in the discovery of electronic information, and, if so, what is the role? Who pays?

Meeting 6: Benjamin Cardozo Inn; Thursday, March 16, 2006; Topic:

Peremptory Challenges

In Miller-El v. Dretke --- S.Ct. ----, 2005 WL 1383365 (U.S.) (June 13, 2005), the Supreme Court overturned a murder conviction because of the race-based use of peremptory challenges. In a concurring opinion, that has caught the attention of academics, judges and practitioners, Mr. Justice Breyer questioned the wisdom of a jury system that allows peremptory challenges of any kind. He asserted that "the time has come . . . to reconsider . . . the peremptory challenge system as a whole." Id. at * 22.

Should peremptory challenges be abolished in whole or in part in criminal cases?

Should peremptory challenges be abolished in whole or in part in civil cases?

If peremptory challenges are abolished, what should the role of the judge and counsel be during jury selection?

If peremptory challenges are abolished, should voir dire be expanded, decreased or left about the same?

Meeting 7: John Marshall Inn; Tuesday, April 11, 2006; Topic:

Judicial Activism

What is “judicial activism”? Does it exist? If so, is it “left leaning” or “right leaning”? Give examples of decisions that might be categorized as “judicial activism,” particularly local examples. Is there a solution to “judicial activism”?